

§ 245.6

7 CFR Ch. II (1-1-04 Edition)

(v) An explanation that the information on the application may be verified at any time during the school year;

(vi) An explanation that households receiving free or reduced price benefits must notify school officials during the school year of any decreases in household size and any increases in income of over \$50 per month or \$600 per year (or a lesser amount if established by the State) or, in the case of households that provided a food stamp or TANF case number or a FDPIR case number or other FDPIR identifier to establish eligibility for free meals or free milk for a child, of any termination of benefits for such children under the Food Stamp, FDPIR or TANF Programs.

(vii) How a household may apply for benefits at any time during the school year as circumstances change;

(viii) A statement to the effect that children having parents or guardians who become unemployed are eligible for free or reduced price meals or for free milk during the period of unemployment, *Provided*, that the loss of income causes the household income during the period of unemployment to be within the eligibility criteria;

(ix) A statement to the effect that in certain cases foster children are eligible for free or reduced price meals or free milk regardless of the income of the household with whom they reside and that households wishing to apply for such benefits for foster children should contact the School Food Authority;

(x) The statement: "In the operation of child feeding programs, no child will be discriminated against because of race, sex, color, national origin, age or disability;" and

(xi) How a household may appeal the decision of the School Food Authority with respect to the application under the hearing procedure set forth in § 245.7. The letter or notice shall be accompanied by a copy of the application form required under § 245.6.

(2) On or about the beginning of each school year, a public release, containing the same information supplied to parents, and including both free and reduced price eligibility criteria shall be provided to the informational media, the local unemployment office, and to any major employers contem-

plating large layoffs in the area from which the school draws its attendance.

(b) Copies of the public release shall be made available upon request to any interested persons. Any subsequent changes in a school's eligibility criteria during the school year shall be publicly announced in the same manner as the original criteria were announced.

(Sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758); Pub. L. 79-396, 60 Stat. 231 (42 U.S.C. 1751); Pub. L. 89-642, 80 Stat. 885-880 (42 U.S.C. 1773); Pub. L. 91-248, 84 Stat. 207 (42 U.S.C. 1759))

[Amdt. 8, 40 FR 57207, Dec. 8, 1975, as amended by Amdt. 10, 41 FR 28783, July 13, 1976; 47 FR 31852, 31853, July 23, 1982; Amdt. 24, 48 FR 19355, Apr. 29, 1983; 49 FR 26034, June 26, 1984; 52 FR 19275, May 22, 1987; 64 FR 50744, Sept. 20, 1999; 64 FR 72472, Dec. 28, 1999; 66 FR 48328, Sept. 20, 2001; 68 FR 53489, Sept. 11, 2003]

§ 245.6 Certification of children for free and reduced price meals and free milk.

(a) Each School Food Authority of a school participating in the National School Lunch Program, School Breakfast Program or Special Milk Program or of a commodity only school shall provide supplies of a form for use by families in making application for free or reduced price meals or free milk for their children. The application shall be clear and simple in design and the information requested thereon shall be limited to that required to demonstrate that the family does, or does not, meet the eligibility criteria for free or reduced price meals, respectively, or for free milk, issued by the School Food Authority. The information requested on the application with respect to the current income of the household shall be limited to the income received by each member identified by the household member who received the income, and the source of the income (such as earnings, wages, welfare, pensions, support payments, unemployment compensation, social security and other cash income). Other cash income includes cash amounts received or withdrawn from any source, including savings, investments, trust accounts, and other resources which are available for payment of the price

of a child's meals or milk. Additionally, the application shall require applicants to provide the names of all household members and the social security number of the adult household member who signs the application. In lieu of a social security number, the household may indicate the adult household member who signs the application does not possess a social security number. However, if application is being made for a child who is a member of a food stamp, FDPIR or TANF household, the application shall enable the household to provide the appropriate food stamp or TANF case number or FDPIR case number or other FDPIR identifier in lieu of names of all household members, household income information and social security number. The application shall also contain substantially the following statements:

(1) "Unless you include your child's case number for the Food Stamp Program, the Food Distribution Program on Indian Reservations (or other identifier for the Food Distribution Program on Indian Reservations) or the Temporary Assistance for Needy Families Program, you must include the social security number of the adult household member signing the application or indicate that the household member does not have a social security number. This is required by section 9 of the National School Lunch Act. The social security number is not mandatory, but the application cannot be approved if a social security number is not given or an indication is not made that the signer does not have a social security number. The social security number will be used in the administration and enforcement of the program." State agencies and school food authorities must ensure that the notice complies with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note); and

(2) "In certain cases foster children are eligible for free or reduced price meals or free milk regardless of your household income. If you have such children living with you and wish to apply for such meals or milk for them, please contact us." The application shall also include a statement, immediately above the space for signature, that the person signing the application certifies that all information furnished

in the application is true and correct, that the application is being made in connection with the receipt of Federal funds, that school officials may verify the information on the application, and that deliberate misrepresentation of the information may subject the applicant to prosecution under applicable State and Federal criminal statutes. The application shall be signed by an adult member of the family. The application shall contain clear instructions with respect to the submission of the completed application to the official or officials designated by the School Food Authority to make eligibility determinations on its behalf. A family shall be permitted to file an application at any time during the school year.

(b) *Direct certification.* In lieu of determining eligibility based on information provided by the household on the free and reduced price meal or milk application specified in paragraph (a) of this section, school food authorities may determine children eligible for free meals or milk based on documentation obtained from the appropriate State or local agency responsible for the administration of the Food Stamp Program, FDPIR and/or the TANF Program, hereafter referred to as direct certification. The documentation for direct certification shall include the information specified in § 245.2(a-4)(2). The food stamp, FDPIR or TANF office may provide school officials with a list which includes all required documentation, or documentation may be obtained through a computerized match in which computerized lists of names of children from food stamp, FDPIR or TANF households and other identifying information are matched against a list of names and other identifying information of schoolchildren. When computer matches are used or the signature of the food stamp, FDPIR or TANF official is otherwise impracticable to obtain, the signature of the food stamp, FDPIR or TANF official is not required. However, other arrangements must be made to ensure that a responsible official can attest to the data. Additionally, the food stamp, FDPIR and/or TANF office may provide food stamp, FDPIR and/or TANF households with individual notices

which contain all required documentation. The household may then transmit the notice to the school.

(1) Information about the child or the household obtained directly from the food stamp, FDPIR or TANF office must be kept confidential and shall be used solely for the purpose of determining the child's eligibility for school meal or milk benefits, or as otherwise permitted by section 9 of the National School Lunch Act.

(2) School food authorities are not required to provide the letter specified in § 245.5(a) to the parents of children who are eligible for free meals under paragraph (b) of this section when the school food authorities distribute the letters or notices with application forms and the notice to households concerning eligibility for benefits under direct certification, specified in paragraph (c)(1) of this section, through the mail, individualized student packets, or other method which prevents the overt identification of children eligible for direct certification.

(c) *Determination of eligibility.* Prior to the processing of applications or the completion of direct certification procedures for the current school year, children from households with approved applications or documentation of direct certification on file from the preceding year may be served reimbursable free and reduced price meals or free milk. However, applications and documentation of direct certification from the preceding year may be used to determine eligibility only during the 30 operating days following the first operating day at the beginning of the school year, or during a timeframe established by the State agency, provided that any State agency timeframe does not exceed the 30 operating day limit. The school food authority must take the income information provided by the household on the application and calculate the household's total current income. When a household submits an application containing complete documentation, as specified in § 245.2(a-4)(1)(i), and the household's total current income is at or below the eligibility limits specified in the Income Eligibility Guidelines, the children in that household must be approved for

free or reduced price benefits, as applicable. When a household submits an application containing the required food stamp, FDPIR or TANF documentation, as specified in § 245.2(a-4)(1)(ii), the children in that household must be approved for free benefits. Additionally, when the school food authority obtains documentation from the State or local agency responsible for the administration of the Food Stamp Program, FDPIR and/or TANF Program that children are members of currently certified food stamp, FDPIR or TANF households, as specified in § 245.2(a-4)(2), the school food authority must approve such children for free benefits without applications from the households.

(1) *Notice of approval.* The school food authority must promptly notify the household of their children's eligibility and provide them the benefits to which they are entitled. Households approved for benefits based on documentation provided by the appropriate State or local agency responsible for the administration of the Food Stamp Program, FDPIR or TANF Program must be notified, in writing, that their children are eligible for free meals or free milk, that households must contact the school when their children are no longer eligible for food stamp, FDPIR or TANF benefits, and that no application for free and reduced price school meals is required at this time. The notice of eligibility must also inform households that they must notify the school if they do not want their children to receive free benefits. When the household transmits the notice of eligibility containing the above information and the documentation provided by the food stamp, FDPIR or TANF office to the school, the school food authority is not required to provide a separate notice of eligibility. Children from households that notify the school that they do not want free benefits must have their benefits discontinued as soon as possible. Any notification from the household declining benefits must be documented and maintained on file, in accordance with paragraph (e) of this section. Additionally, a school food authority that is notified by the household that they are no longer eligible to receive food stamp,

FDPIR or TANF benefits must follow the procedures specified in §245.6a(e), and inform the household that it must submit an application with income information to establish continued eligibility.

(2) *Notice of denial.* When the application furnished by the family is not fully documented or does not meet the eligibility criteria for free or reduced price benefits, school officials shall promptly provide written notice to each family denied benefits. As a minimum, this notice shall include:

(i) The reason for the denial of benefits, e.g. income in excess of allowable limits or incomplete application; (ii) notification of the right to appeal; (iii) instructions on how to appeal; and (iv) a statement reminding parents that they may reapply for free and reduced price benefits at any time during the school year. The reasons for ineligibility shall be properly documented and retained on file at the School Food Authority.

(3) *Appeals of denied benefits.* A family who wishes to appeal a denied application by the School Food Authority may do so as specified in §245.7. However, prior to initiating the hearing procedure, the parent may request a conference to provide the opportunity for the parent and school officials to discuss the situation, present information, and obtain an explanation of the data submitted in the application or the decision rendered. The request for a conference shall not in any way prejudice or diminish the right to a fair hearing. The School Food Authority shall promptly schedule a fair hearing, if requested.

(d) After the letter to parents and the applications have been disseminated, the School Food Authority may determine, based on information available to it, that a child for whom an application has not been submitted meets the School Food Authority's eligibility criteria for free and reduced price meals or for free milk. In such a situation, the School Food Authority shall complete and file an application for such child setting forth the basis of determining the child's eligibility. When a School Food Authority has obtained a determination of individual family income and family-size data from other

sources, it need not require the submission of an application for any child from a family whose income would qualify for free or reduced price meals or for free milk under the School Food Authority's established criteria. In such event, the School Food Authority shall notify the family that its children are eligible for free or reduced price meals or for free milk. Nothing in this paragraph shall be deemed to provide authority for the School Food Authority to make eligibility determinations or certifications by categories or groups of children.

(e) The school food authority must maintain documentation substantiating eligibility determinations on file for 3 years after the date of the fiscal year to which they pertain, except that if audit findings have not been resolved, the documentation must be maintained as long as required for resolution of the issues raised by the audit.

(f) *Disclosure of program eligibility information to State Medicaid (Medicaid) and the State Children's Health Insurance Program (SCHIP)* Program eligibility information about children eligible for free and reduced price meals may be disclosed to Medicaid and SCHIP as described in this section.

(1) *Who decides whether to disclose program eligibility information to Medicaid and/or SCHIP?* The State agency may elect to allow school food authorities to disclose children's free and reduced price meal eligibility information to Medicaid and SCHIP. School food authorities may then elect to do so. Children's program eligibility information may only be disclosed to Medicaid or SCHIP when both the State agency and the school food authority so elect, the parent/guardian does not decline to have their eligibility information disclosed as described in paragraph (f)(5), and the requirements in this paragraph (f) are met.

(2) *What information may we disclose for use by Medicaid and SCHIP?* The State agency or school food authority, as appropriate, may disclose children's names, eligibility status (whether they are eligible for free or reduced price meals or free milk), and any other eligibility information obtained through the free and reduced price meal/milk

application or obtained through direct certification to persons directly connected with the administration of Medicaid or SCHIP.

(3) *Who are persons “directly connected” with the administration of Medicaid and SCHIP?* State employees and persons authorized under Federal and State Medicaid and SCHIP requirements to carry out initial processing of Medicaid or SCHIP applications or to make eligibility determinations are persons directly connected with the administration of Medicaid and SCHIP for purposes of disclosure of children's free and reduced price meal and free milk eligibility information.

(4) *What are the restrictions on how Medicaid and SCHIP use children's free and reduced price meal and free milk eligibility information?* Medicaid and SCHIP agencies and health insurance program operators receiving children's free and reduced price meal and free milk eligibility information may only use the information to seek to enroll children in Medicaid or SCHIP. The Medicaid and SCHIP enrollment process may include targeting and identifying children from low-income households who are potentially eligible for Medicaid or SCHIP for the purpose of seeking to enroll them in Medicaid or SCHIP.

(5) *Must we notify households of potential disclosure to Medicaid or SCHIP?* The State agency or school food authority, as appropriate, must notify parents/guardians that their children's free or reduced price meal or free milk eligibility information will be disclosed to Medicaid and/or SCHIP unless the parent/guardian elects not to have their information disclosed. Additionally, the State agency or school food authority, as appropriate, must give parents/guardians an opportunity to elect not to have their information disclosed to Medicaid or SCHIP. Only the parent or guardian who is a member of the household or family for purposes of the free and reduced price meal or free milk application may decline the disclosure of eligibility information. The notification must inform parents/guardians that they are not required to consent to the disclosure, that the information, if disclosed, will be used to identify children eligible for and seek

to enroll children in a health insurance program, and that their decision will not affect their children's eligibility for free or reduced price meals or free milk. The notification may be included in the letter/notice to parents/guardians that accompanies the free and reduced price meal or free milk application, on the application itself or in a separate notice provided to parents/guardians. The notice must give parents/guardians adequate time to respond. For children determined eligible through direct certification, the notice of potential disclosure may be included in the document informing parents/guardians of their children's eligibility for free meals or free milk through direct certification.

(6) *May social security numbers be disclosed?* The State agency or school food authority, as appropriate, may disclose social security numbers to any programs or persons authorized to receive all program eligibility information under this paragraph (f), provided parents/guardians have not declined to have their information disclosed. However, State agencies and school food authorities that plan to disclose social security numbers must give notice of the planned use of the social security numbers. This notice must be in accordance with section 7(b) of the Privacy Act of 1974 (5 U.S.C. 552a note). The application must include substantially the following language for disclosures of social security numbers to Medicaid or SCHIP: “The social security number may also be disclosed to Medicaid and the State Children's Health Insurance Program for the purpose of identifying and seeking to enroll eligible children in one of these health insurance programs.” This language is in addition to the notice required in paragraph (a)(1) of this section. State agencies and school food authorities are responsible for drafting the appropriate notice for disclosures of social security numbers.

(7) *Are agreements required before disclosing program eligibility information?* The State agency or school food authority, as appropriate, must have a written agreement with the State or local agency or agencies administering Medicaid or SCHIP prior to disclosing

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children's free and reduced price eligibility information. At a minimum, the agreement must:

- (i) Identify the health insurance program or health agency receiving children's eligibility information;
- (ii) Describe the information that will be disclosed;
- (iii) Require that the Medicaid or SCHIP agency use the information obtained and specify that the information must only be used to seek to enroll children in Medicaid or SCHIP;
- (iv) Describe how the information will be protected from unauthorized uses and disclosures;
- (v) Describe the penalties for unauthorized disclosure; and
- (vi) Be signed by both the Medicaid or SCHIP program or agency and the State agency or school food authority, as appropriate.

(8) *What are the penalties for unauthorized disclosure or misuse of information?* In accordance with section 9(b)(2)(C)(v) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(2)(C)(v)), any individual who publishes, divulges, discloses or makes known in any manner, or to any extent not authorized by statute or this section, any information obtained under this paragraph (f) will be fined not more than \$1,000 or imprisoned for up to 1 year, or both.

(9) *What are the State agency's responsibilities regarding disclosures?* State agencies that elect to allow disclosure of children's free and reduced price meal eligibility information to Medicaid or SCHIP, as provided in this paragraph (f), must ensure that any school food authority acting in accordance with that option:

(i) Has a written agreement with the State or local agency or agencies administering health insurance programs for children under titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 *et seq.* and 1397aa *et seq.*) that requires the health agencies to use children's free and reduced price meal eligibility information to seek to enroll children in those health insurance programs; and

(ii) Notifies each household of the information that will be disclosed, that the information disclosed will be used only to seek to enroll children in Med-

icaid or SCHIP and provides each parent/guardian with an opportunity to elect not to have the information disclosed.

(Sec. 803, Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1758))

[35 FR 14065, Sept. 4, 1970, as amended at 38 FR 14957, June 7, 1973; Amdt. 6, 39 FR 30338, Aug. 22, 1974; Amdt. 9, 41 FR 26192, June 25, 1976; Amdt. 19, 45 FR 67287, Oct. 10, 1980; 47 FR 31853, July 23, 1982; 49 FR 26034, June 26, 1984; 52 FR 19275, May 22, 1987; 55 FR 19240, May 9, 1990; 56 FR 32950, July 17, 1991; 56 FR 33860, July 24, 1991; 64 FR 72472, Dec. 28, 1999; 66 FR 2205, Jan. 11, 2001; 66 FR 48328, Sept. 20, 2001; 68 FR 53489, Sept. 11, 2003]

§ 245.6a Verification requirements.

(a) *Verification requirement.* School officials may seek verification of the information on the application. State agencies shall ensure that by December 15 of each School Year, School Food Authorities have selected and verified a sample of their approved free and reduced price applications in accordance with the conditions and procedures described in this section. Verification activity may begin at the start of the school year but the final required sample size shall be based on the number of approved applications on file as of October 31. Any extensions to these deadlines must be approved in writing by FNS. School Food Authorities are required to satisfy the verification requirement by using either random sampling or focused sampling as described below. *Random* sampling consists of verifying a minimum of the lesser of 3 percent or 3,000 applications which are selected by the School Food Authority. *Focused* sampling consists of selecting and verifying a minimum of: the lesser of 1 percent or 1,000 of total applications selected from non-food stamp households claiming monthly income within \$100 or yearly income within \$1200 of the income eligibility limit for free or reduced price meals; plus the lesser of one half of 1 percent (.5%) or 500 applications of food stamp, FDPIR or TANF households that provided a food stamp or TANF case number or FDPIR case number or other FDPIR identifier in lieu of income information. A State may require all School Food Authorities to perform either random or focused sampling. School